

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

COMERICA BANK

Plaintiff

Case No. 24-10938

vs.

BANK OF AMERICA, N.A.

Defendant

COMPLAINT

Plaintiff Comerica Bank (“Comerica”) complains against defendant Bank of America, N.A. (“BOA”) as follows:

PARTIES – JURISDICTION – VENUE

1. This action for money damages arises out of ten separate check transactions in the combined amount of \$99,211.88. Each time when it presented or payment one of the ten disputed checks, BOA breached its Uniform Commercial Code (“UCC”) presentment warranties that it owed to Comerica.
2. This district court has subject matter jurisdiction by operation of 28 USC 1332(a)(1) because, exclusive of costs, interest, and attorney fees, the amount in controversy exceeds \$75,000 and diversity of citizenship between the parties exists:
 - a. Comerica is a Texas banking association organized and existing under Texas law with its principal place of business in Texas.
 - b. BOA is a national banking association organized and existing under the laws of the United States with its home office in Charlotte, North Carolina (*see* 28 USC 1348).
3. Venue is proper in this district court because the action arose at Comerica’s Operations Center in Livonia, Michigan, where BOA presented each disputed check for payment. BOA also conducts business in this judicial district.

GENERAL ALLEGATIONS

4. Comerica conducts banking operations in Michigan including at its Livonia Operations Center where it processed the checks at issue in this action.
5. Complaint exhibits 1 through 10 are redacted images of the checks at issue in this action. Each check was drawn on a Comerica account. BOA accepted for deposit or otherwise paid each check before presenting them to Comerica for payment. The following table lists these checks by drawer, item number, posting date, and amount:

EX.	DRAWER	CHECK #	POSTED	AMOUNT
1	IEM Power Systems	014894	04/14/2021	23,050.80
2	Carrington College	408980	06/14/2021	1,358.00
3	Smokintex LLC	6147	01/26/2022	2,972.07
4	Jean Dure	9699	03/28/2022	20,000.00
5	DistribAire, Inc.	49685	11/30/2021	22,712.50
6	Holy Spirit Episcopal Sch	32483	02/28/2022	2,460.00
7	Holy Spirit Episcopal Sch	32479	02/28/2022	6,000.00
8	Holy Spirit Episcopal Sch	32486	02/28/2022	6,000.00
9	Holy Spirit Episcopal Sch	32484	03/07/2022	2,500.00
10	Mid-American Estate	16182	12/19/2022	12,158.51

6. The UCC provides, *inter alia*, that a depositary bank (here BOA) warrants as a matter of law to a drawee/payor bank (here Comerica) that the depositary bank is entitled to enforce each presented check or is authorized to obtain payment on behalf of one who is entitled to enforce the presented check; and, that each presented check was not altered. UCC 4-208(a); 3-417(a).

7. BOA, the depositary bank, breached its warranties to Comerica under UCC 4-208(a) and 3-417(a) by wrongfully taking the checks for deposit and then presenting an electronic image of each item to Comerica for payment.
8. BOA endorsed and warranted by operation of law each check depicted in the complaint exhibits 1 through 10.
9. Relying on BOA's check warranties, Comerica in good faith paid BOA on each item and debited a like amount from the relevant Comerica Account.
10. After each item posted, Comerica learned that the check was not properly chargeable against the relevant Comerica Account.
11. BOA breached its presentment warranties and damaged Comerica.
12. Comerica is entitled to damages from BOA in the face amount of the checks, \$99,211.88, plus interest and compensation for expenses of litigation, including but not limited to attorney fees. UCC 4-208; 3-417.

COUNT I (Exhibits: 1-4)

13. The General Allegations are incorporated by reference into this count.
14. As a matter of law BOA made the warranty to Comerica found in UCC 3.417(a)(1) and 4.208(a)(1) when BOA transferred and presented the items depicted in complaint exhibits 1 through 4.
15. BOA was not entitled to enforce the disputed checks and was not authorized to collect on behalf of a person entitled to enforce those checks.

16. None of the checks in complaint exhibits 1 through 4 was endorsed as drawn. Each check either had a missing, improper, or an unauthorized endorsement.
17. On information and belief, none of the intended payees on the checks depicted in complaint exhibits 1 through 4: a) received or endorsed the check; b) had any interest in the account at BOA into which each check had been deposited; or, c) received any proceeds or benefit from the check transaction.
18. By presenting the checks in complaint exhibits 1 through 4, BOA breached its presentment warranty in UCC 3.417(a)(1) and 4.208(a)(1) and damaged Comerica.

COUNT II (Exhibits: 5-10)

19. The General Allegations are incorporated by reference into this count.
20. Each of the checks depicted complaint exhibits 5 through 10 was originally issued with the drawer's authorized signature and subsequently, under circumstances presently unknown to Comerica, altered within the meaning of UCC 3.407(a)(i) in that unauthorized changes were made that purported to modify the obligation of a party to the instrument.
21. The alterations fraudulently made to the disputed checks include:
EX-5 (check 49685): original payee and address (*i.e.*, Metropolitan Air Technology LLC, 6235 S Oak Park Avenue, Chicago IL 60638) was altered to: Jeffrey Michael Rudolph, 7936 S Anthony Ave, Chicago, IL 60619

EX-6 (check 32483): original payee (*i.e.*, Maintenance of Houston Inc, 9876 Plano Rd, Dallas, TX 75238) was altered to: Brianna George, 1009 Thomas Blvd, Port Arthur, TX 77640

EX-7 (check 32479): original payee (*i.e.*, Kokua, PO Box 732697, Dallas, TX 75373) and original amount (*i.e.*, \$1,575.00) were altered to: Brian Roy Jr, 1222 14th St, Port Arthur, TX 77640 and \$6,000.00, respectively

EX-8 (check 32486): original payee (*i.e.*, Transportation Connection, Inc, 636 S LaBrea Ave, Inglewood, CA 90301) and original amount (*i.e.*, \$1,338.56) were altered to: Brianna George, 1009 Thomas Blvd, Port Arthur, TX 77640 and \$6,000.00, respectively

EX-9 (check 32484): original payee (*i.e.*, Innovative Communication Systems, 10430 Gulfdale Street, San Antonio, TX 78216) and original amount (*i.e.*, \$200.00) were altered to: Dale Wilson, 7623 Ninth Ave Apt 264, Port Arthur TX 77642 and \$2,500.00, respectively

EX-10 (check 16182): original payee (*i.e.*, United Health Care Insurance Company) and original amount (*i.e.*, \$158.51) were altered to: Isaiah Bean, 18207 Stillwater Place Dr, Humble, TX 77346 and \$12,158.51, respectively

22. BOA's transfer and presentment of each check constituted BOA's no-alteration warranty to Comerica. UCC 3.417(a)(2); 4.208(a)(2).
23. None of the altered payees was an intended payee of the checks as originally drawn.
24. On information and belief, none of the intended payees of the disputed checks: a) received or endorsed the check; b) had any interest in the account at BOA into which the check had been deposited; or, c) received any proceeds or benefit from the check transaction.

25. By presenting the altered checks depicted in complaint exhibits 5 through 10, BOA breached its no-alteration warranty in UCC 3.417(a)(2) and 4.208(a)(2) and damaged Comerica.

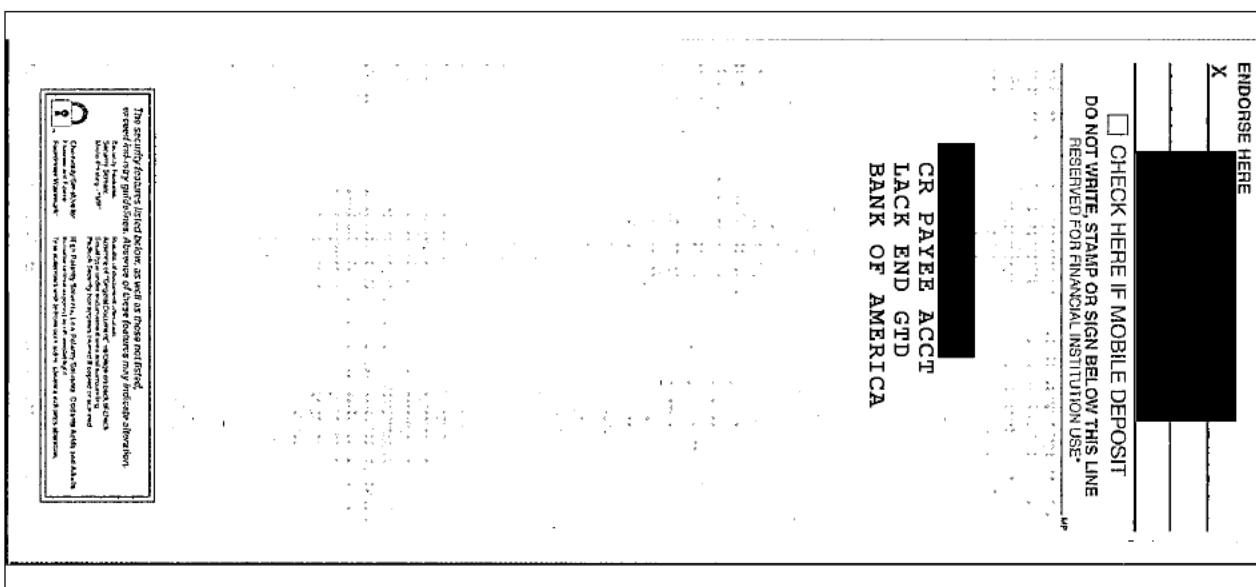
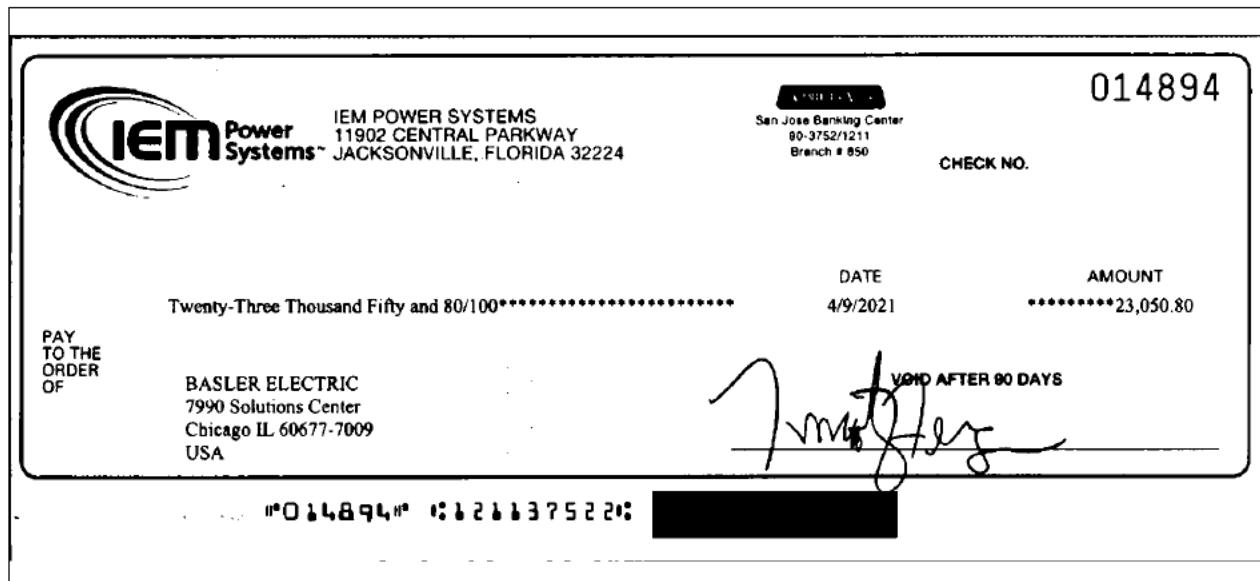
RELIEF REQUESTED

Plaintiff Comerica Bank seeks a money judgment in its favor against Bank of America, N.A. in the face amount of the disputed checks, \$99,211.88, plus interest and compensation for expenses of litigation, including but not limited to attorney fees, and any other damages allowed by law.

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hstancato@stwlawfirm.com
P29538

EXHIBIT-1



Posted : 04/14/2021
Bank : 00000002
R/T : 12113752
Account : [REDACTED]
Check : 14894
Amount : 23050.80
DIN : 970010534

EXHIBIT-2



CARRINGTON COLLEGE
3828 WEST CALDWELL
VISALIA, CA 93277
(559) 730-4055

• COMERICA
6200 N. PALM AVENUE, STE. 320
FRESNO, CA 93704
90-3752/1211

408980

PAY EXACTLY ~~1~~ 1,358 dols 00 cts

*****ONE THOUSAND THREE HUNDRED FIFTY-EIGHT DOLLARS AND XX / 100

DATE 6/1/2021

AMOUNT 1,358.00

TO THE Damas Diaz, Luzelena
ORDER 13616 Mount Olympus St.
OF Reno, NV 89506

Damas Diaz, Luzelena
Fund Source(s): FDU

VOID IF NOT CASHED IN 90 DAYS

15089801 61211375226

END USE HERE

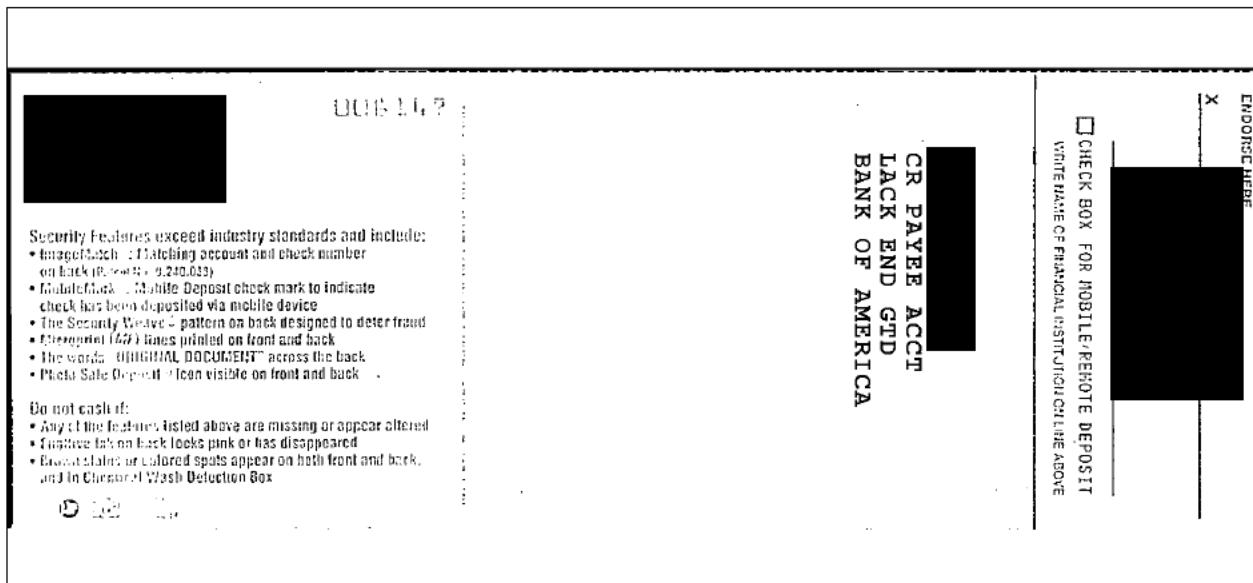
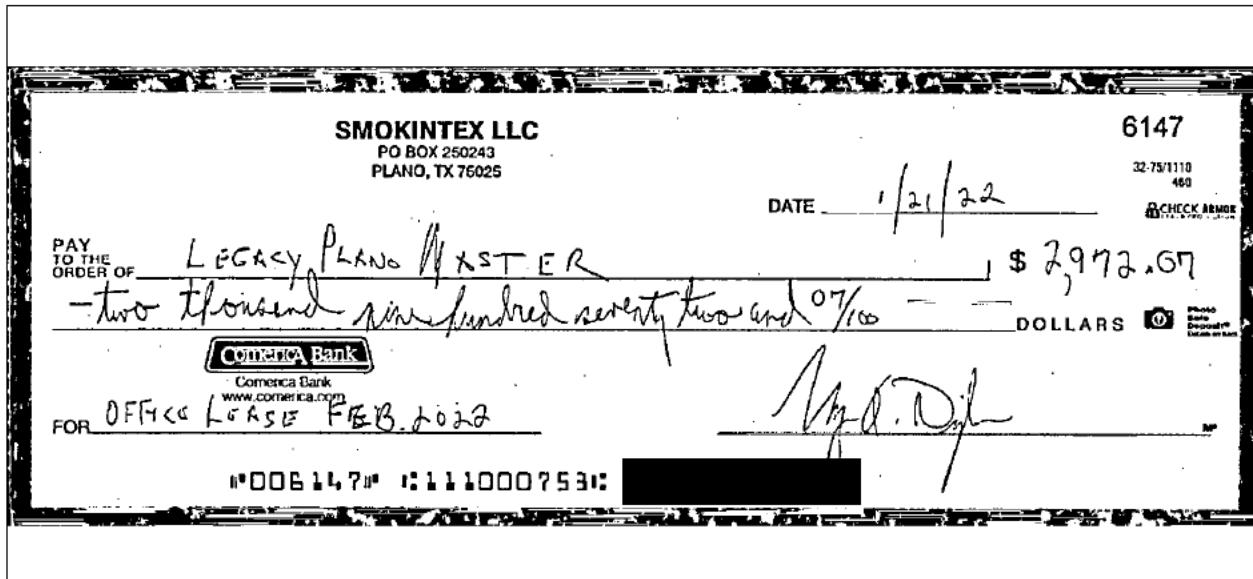
ITEM # 80766

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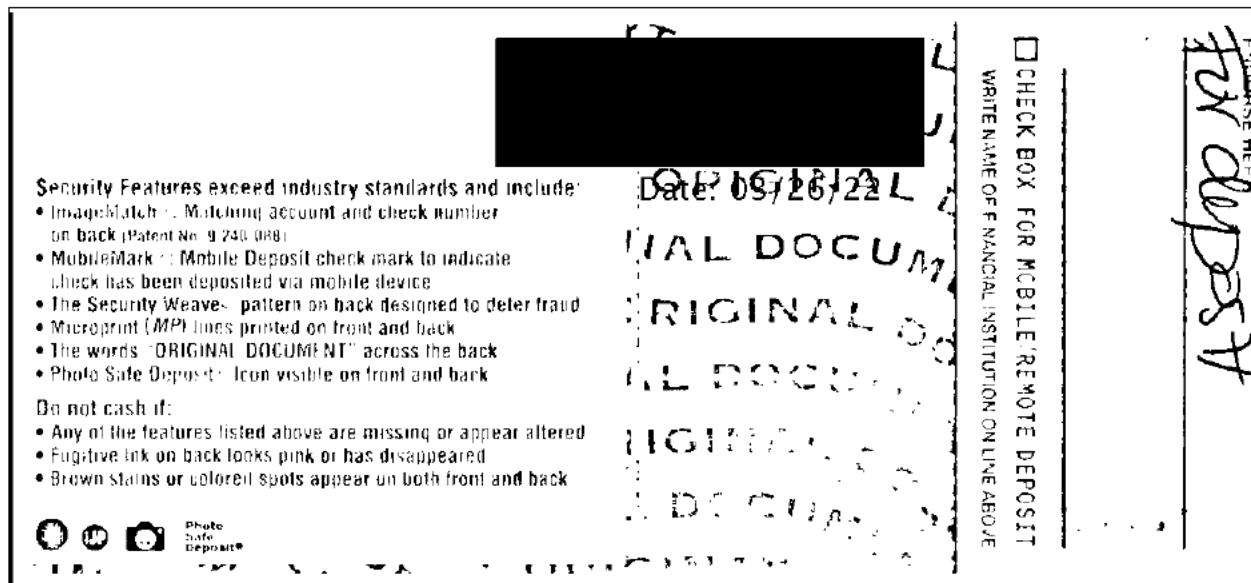
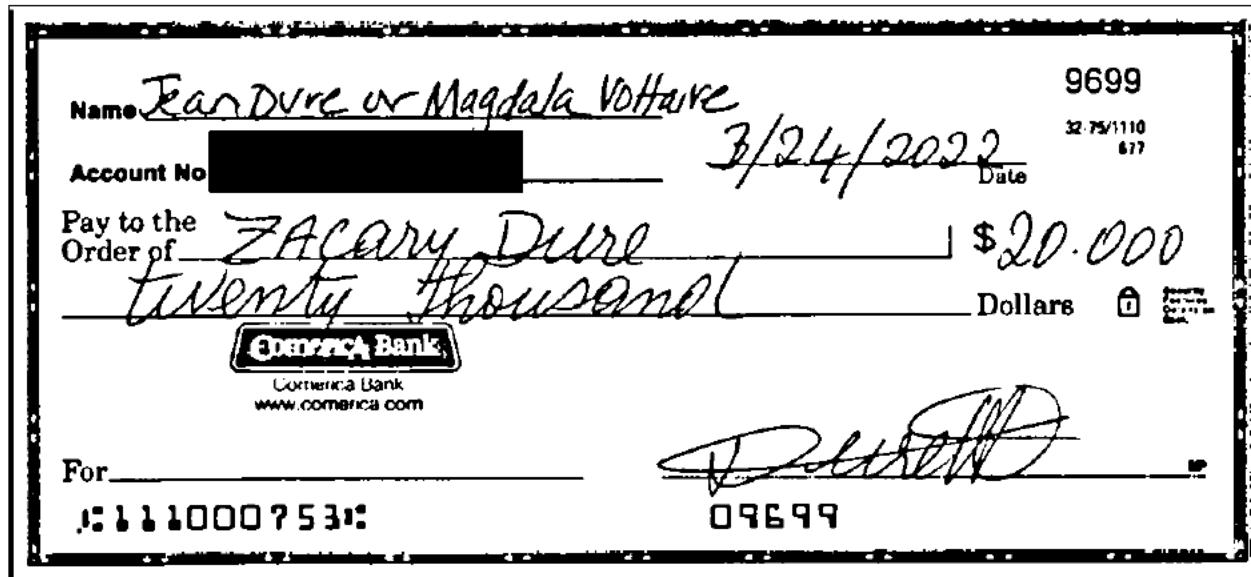
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Account : XXXXXXXXXX
Check : 408980
Amount : 1358.00
DIN : 970725794

EXHIBIT-3



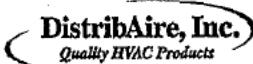
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 R/T : 11100075
 Account : [REDACTED]
 Check : 6147
 Amount : 2972.07
 DIN : 970324718

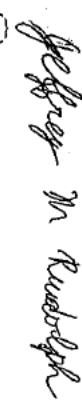
EXHIBIT-4



Posted	: 03/28/2022
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R/T	: 11100075
Account	: ██████████
Check	: 9699
Amount	: 20000.00
DIN	: 970088717

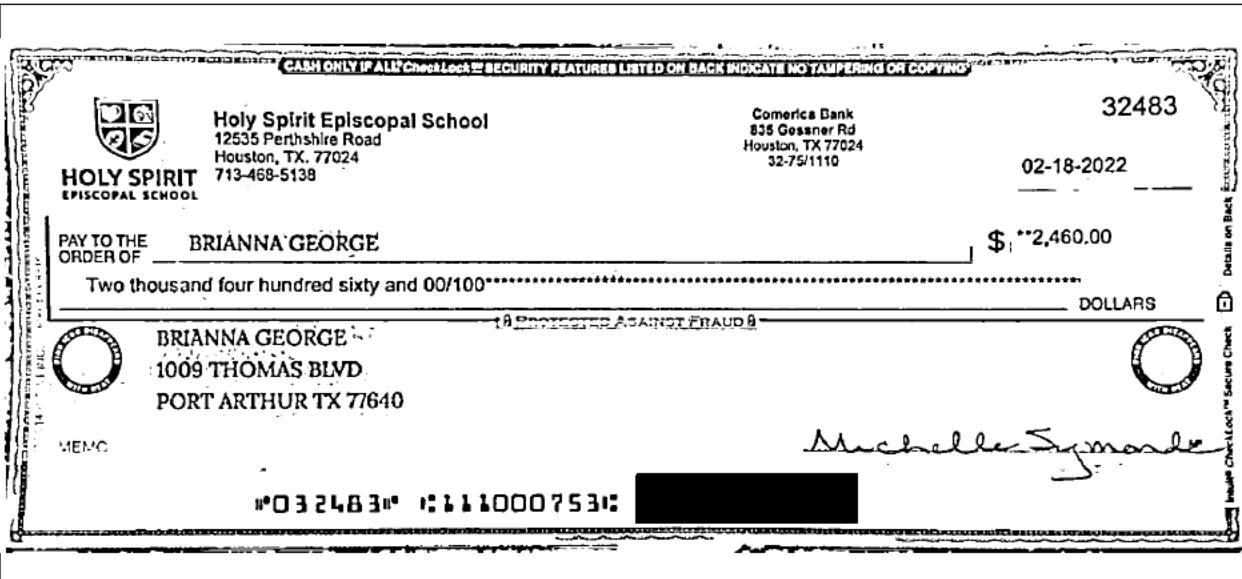
EXHIBIT-5

 DistribAire, Inc. <i>Quality HVAC Products</i> P.O. Box 630409 Houston, Texas 77263-0409		Comerica Bank - Texas Houston, Texas 32-75/1110	49685  10/15/2021 DATE 49685 METROP CHECK AMOUNT 22712.50
TO THE ORDER OF JEFFREY MICHAEL RUDOLPH 7936 S ANTHONY AVE CHICAGO, IL 60619		 AUTHORIZED SIGNATURE	
#049685# 1110007530 			

<i>The security features listed below, as well as those</i> <i>notified, exceed industry guidelines.</i> RS/77		<input type="checkbox"/> ENDORSE HERE 
Security Features: <ul style="list-style-type: none"> <input type="checkbox"/> Biologen <input type="checkbox"/> High Security Ink <input type="checkbox"/> TransWrite <input type="checkbox"/> True Industries Pictures <input type="checkbox"/> Color Security Pattern <input type="checkbox"/> High Resolution Watermark <input type="checkbox"/> Anti Copy Technology <input type="checkbox"/> Original Document Back Pattern <input type="checkbox"/> Document Control Number Security 		
<input type="checkbox"/> CHECK HERE FOR MOBILE OR REMOTE DEPOSIT ONLY AT _____ NAME OF FINANCIAL INSTITUTION _____ DATE _____ DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE RESERVED FOR FINANCIAL INSTITUTION USE *		

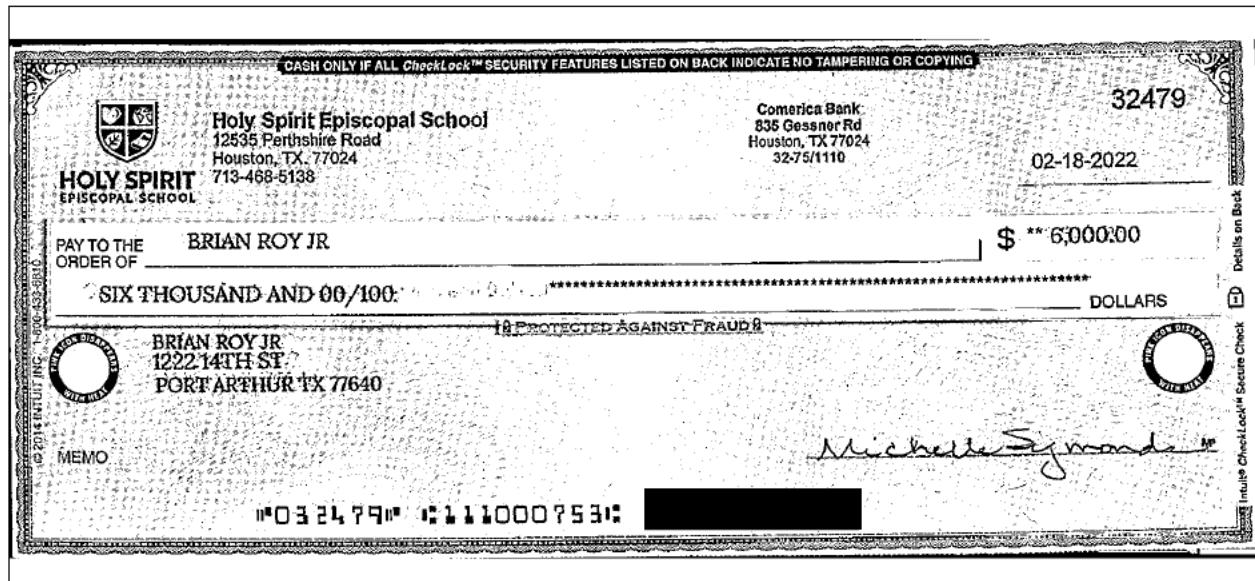
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Account	: 
Check	: 49685
Amount	: 22712.50
DIN	: 970603359

EXHIBIT-6



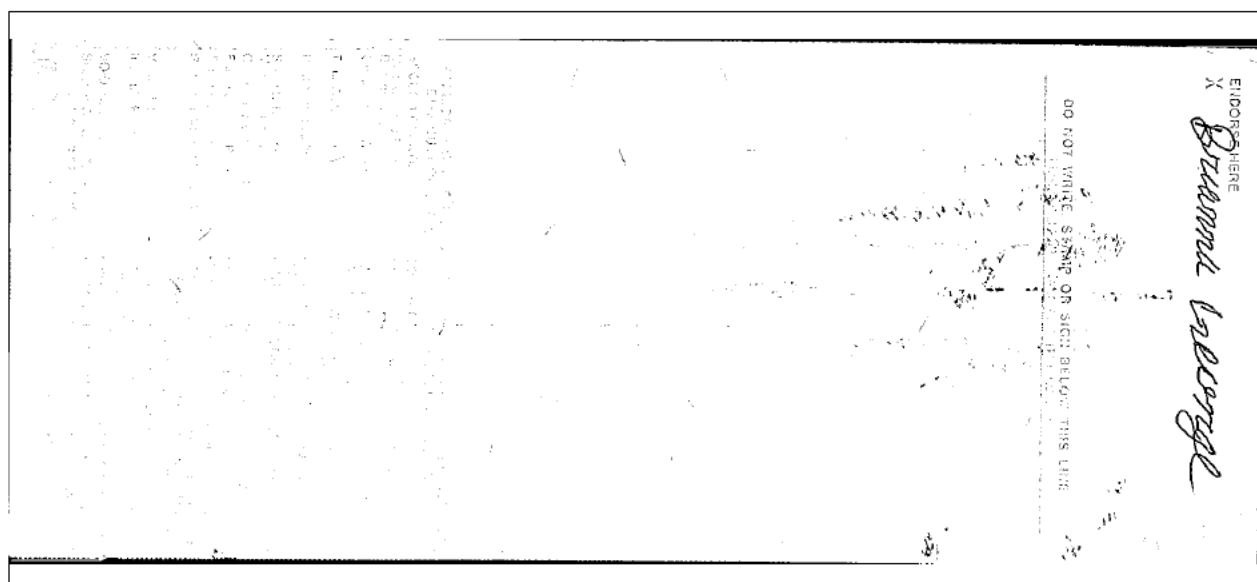
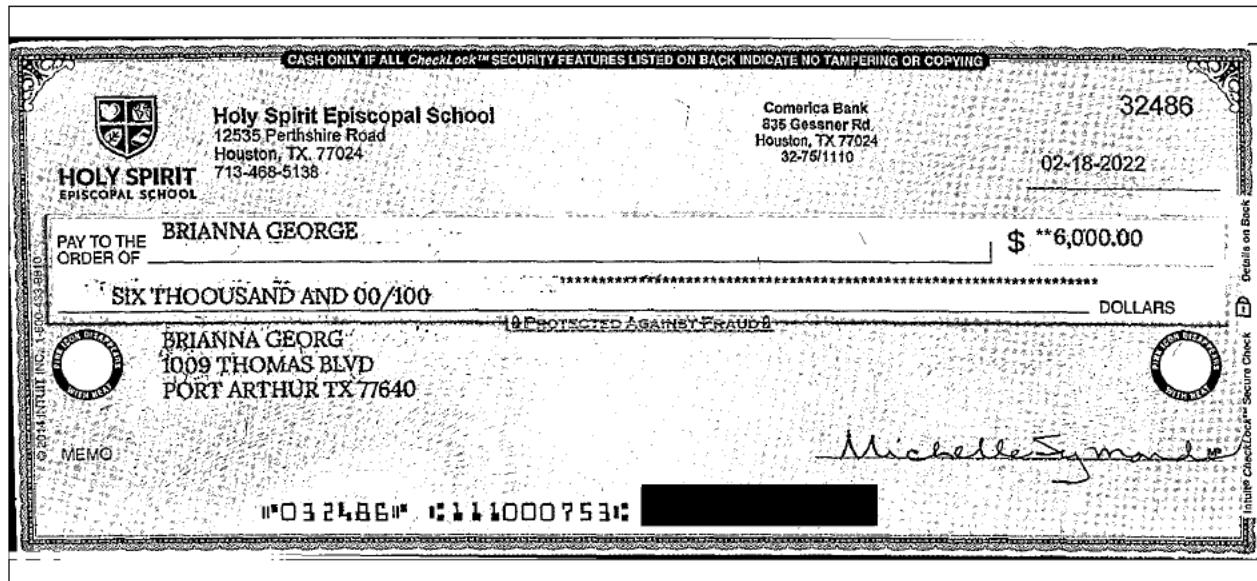
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Bank	:	00000002
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Account	:	[REDACTED]
Check	:	32483
Amount	:	2460.00
DIN	:	970691855

EXHIBIT-7



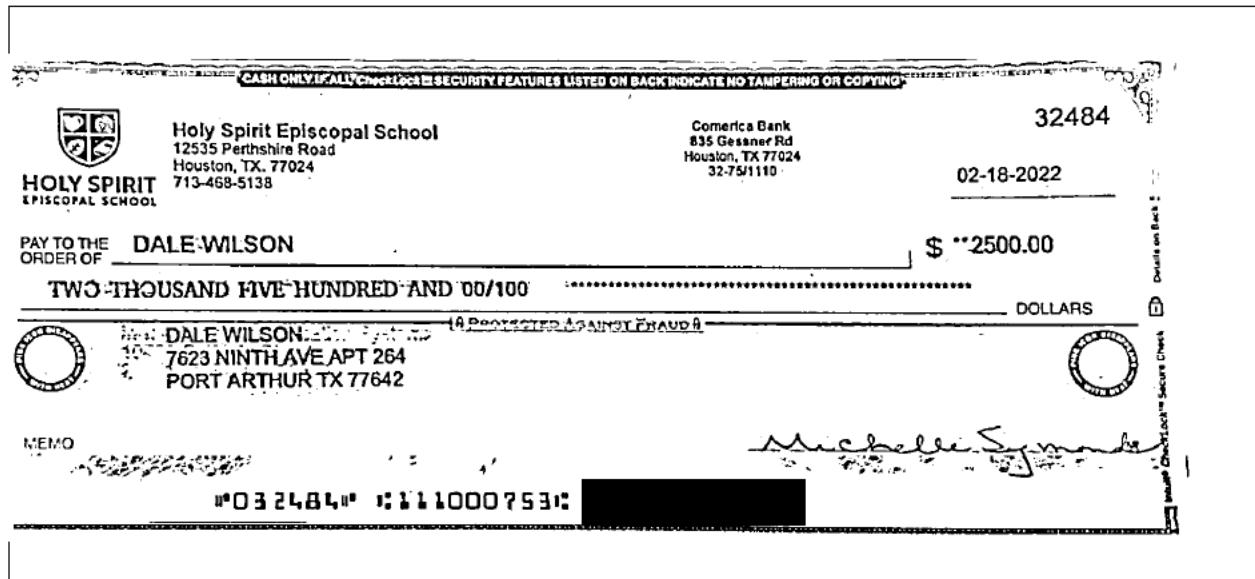
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Bank	: 00000002
R/T	: 11100075
Account	: [REDACTED]
Check	: 32479
Amount	: 6000.00
DIN	: 970692151

EXHIBIT-8



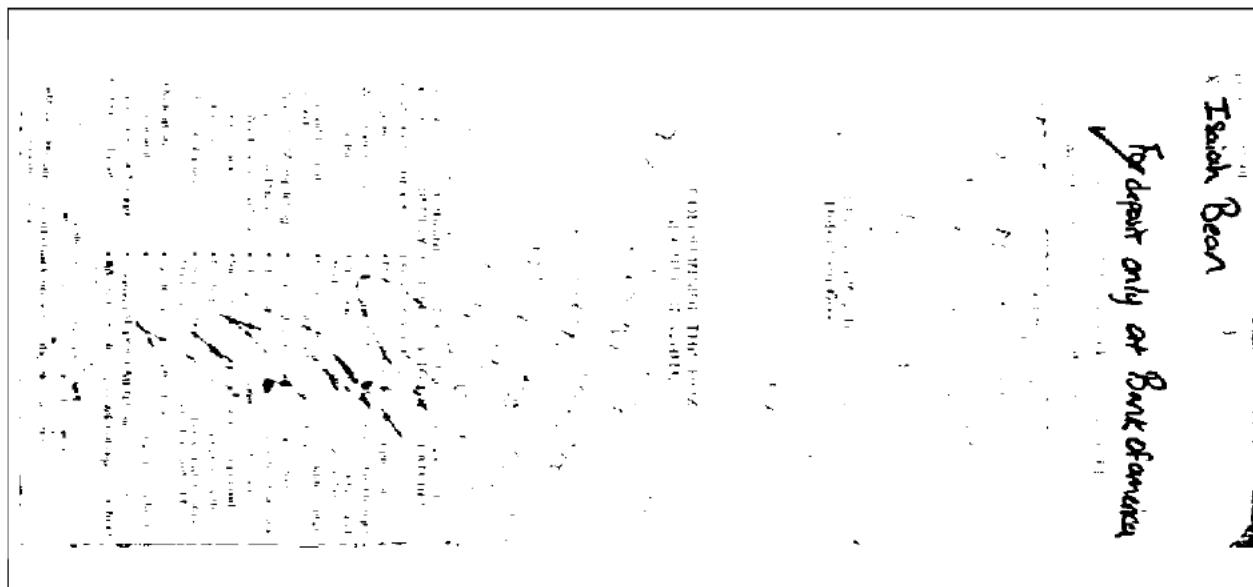
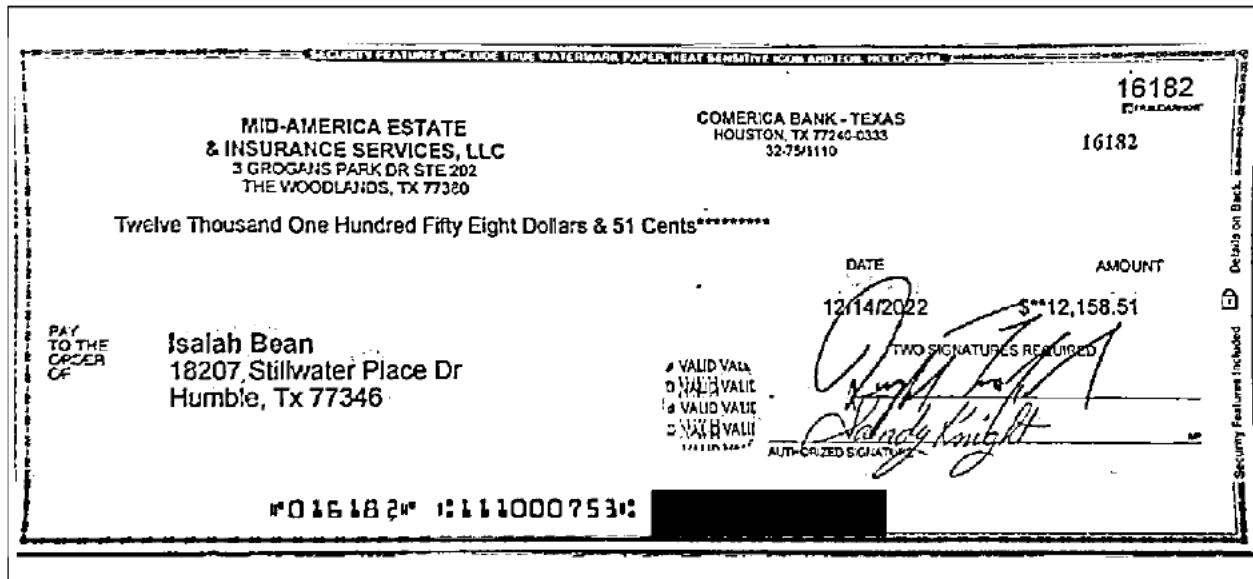
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Bank	:	00000002
R/T	:	11100075
Account	:	[REDACTED]
Check	:	32486
Amount	:	6000.00
DIN	:	970692152

EXHIBIT-9



Posted	:	03/07/2022
Bank	:	00000002
R/T	:	11100075
Account	:	[REDACTED]
Check	:	32484
Amount	:	2500.00
DIN	:	970806311

EXHIBIT-10



Posted	:	12/19/2022
Bank	:	00000002
R/T	:	11100075
Account	:	[REDACTED]
Check	:	16182
Amount	:	12158.51
DIN	:	971186336